MALAYSIAN REPORTS

LEE SANG LOONG SAWMILL SDN. BHD. v. HAJI ZAKARIA BIN ABDUL MAJEED

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat F.J. & Abdoolcader J.) January 23 and March 6, 1980]

[Ipoh — Federal Court Civil Appeal No. 208 of 1978]

Practice and Procedure — Garnishee summons — Money deposited in Court — Debtor turning out to be a bankrupt — Whether moneys due to bankrupt — Whether debt attachable — Whether applicant secured creditor — Allegation of trickery and fraud to cause postponement of execution — Facts not ascertained by learned judge — Bankruptcy Act, 1967, ss. 8(2) and 50.

In this case the appellant issued a writ against Ho Swee Keong for goods sold and delivered in the sum of $30,096.24 and judgment in default was entered against the debtor. A notice of garnishment was issued at the instance of the appellant to the respondent as garnishee. A garnishee summons was taken out by the Sheriff of the High Court. The respondent had engaged the debtor as sub-contractor and it was alleged there were moneys due to the debtor. The respondent on the other hand denied indebtedness to the debtor and said that he had terminated the services of the debtor as sub-contractor. The garnishee summons was by consent transferred to the Judge. At the hearing on December 13, 1976 the respondent and his counsel were absent and the learned Judge made an order that the respondent pay the sum of $30,971 in satisfaction of the judgment debt and costs. On the same day the order was by consent vacated upon terms that the sum of $30,971 be deposited with the solicitors for the respondent for the satisfaction of the appellant's claim if he was successful. The debtor then made a statutory declaration to the effect that moneys were in fact owing to him by the respondent after service of the garnishment notice, refuting the affidavit of the respondent as false, fraudulent and to deceive the court and alleging that even after the service of the garnishment notice the respondent had released to him a sum of $30,000 and that to defeat the claims of his creditors he had colluded and devised a scheme by registering a new firm under the style of Embassy Construction, in which his younger brother, his wife and an ex-employee of the respondent's solicitors were partners. When the garnishee summons came up for hearing, it was adjourned for a date to be fixed and it was ordered that the sum of $30,971 deposited with the respondent's solicitors be paid into court. Subsequently the appellant applied for leave to execute against the respondent for non-compliance with the consent order of December 13, 1976, as it was alleged that the money deposited with the respondent's solicitors had been misappropriated before the payment into court. The learned judge made no order on the application but ordered that the hearing of the garnishee summons was to proceed. At the hearing the respondent gave evidence that he had terminated the services of the debtor and engaged Embassy Construction to complete the sub-contract. He said no moneys were due to the debtor after the termination of his services. Counsel for the respondent was then allowed to cross-examine the debtor on his statutory declaration. The debtor resiled from what he said in the statutory declaration and stated that he had been paid in full before the termination of his sub-contract and that the respondent did not owe him any money. He purported to explain why he had stated otherwise by making gross allegations against counsel appearing for the appellant and the father of the appellant's managing director, who he said had entered into a conspiracy to pervert the course of justice. He then admitted that he had been adjudicated a bankrupt. The learned Judge on this disclosure of the debtor's bankruptcy, held that by notice of section 50 of the Bankruptcy Act, the garnishee summons was abortive and must be set aside. The appellant appealed.

Held: (1) the learned judge should have taken evidence and decide (a) whether any moneys were due at all from the respondent to the debtor at the time of the service of the garnishment notice; (b) whether other moneys were due from the respondent to the debtor under the sub-contract; (c) if there were in fact moneys due from the respondent to the debtor, whether there was an attachable debt and whether the appellant was protected as a secured debtor, despite the bankruptcy of the debtor; (d) if it was found on the facts that the appellant was not a secured creditor, whether the allegation of trickery and fraud was well-founded and whether it would preclude an ostensible claim by the Official Assignee prevailing against the appellant;

(2) in view of the various matters referred to, all the evidence should have been taken and completed and the several aspects of the matter considered before the learned Judge could come to a firm conclusion on the garnishee summons;

(3) in the circumstances the garnishee summons should be tried *de novo* before another judge.

Cases referred to:-

(1) *Armorduct Manufacturing Company Limited* v. *General Incandescent Company Limited* [1911] 2 K.B. 143, 147.

(2) *In re Grosvenor Metal Co. Ltd.* [1950] 1 Ch. 63, 64.

FEDERAL COURT.

Lim Kean Chye (*A. Muriadass* with him) for the appellant.

R.R. Chelliah (*Mrs. L. Mahendran* with him) for the respondent.

Cur. Adv. Vult.

Abdoolcader J. (delivering the judgment of the Court): The appellant appeals against the order of Hashim Yeop A. Sani J., made on December 6, 1978 setting aside the garnishee summons in this case, somewhat abruptly in the course of taking evidence, as a result of a submission made to him by counsel for the respondent, when it transpired in the course of the hearing that the debtor had been adjudicated a bankrupt, that by virtue of section 50 of the Bankruptcy Act, 1967 the garnishee summons must automatically come to an end. A proper evaluation, in the circumstances, of this order and the nature of the appeal before us necessarily requires a brief descent into the sub-cellars of the antecedents and history of this matter.

The appellant as plaintiff issued the writ in these proceedings on August 13, 1976 against Hoo Swee Keong trading as Keong Hing Building Contractor ('the debtor') for goods sold and delivered in the sum of $30,096.24 and interest thereon, and judgment in default of defence was entered against the debtor on September 15, 1976. A notice of garnishment was issued at the instance of the appellant to the respondent as garnishee on October 7, 1976 and served on him on October 19, 1976. The solicitors who acted for the debtor in the action also represented the respondent in the garnishment proceedings. The Sheriff of the High Court then took out a garnishee summons on October 21, 1976 which was served on the respondent on October 28, 1976. The respondent who had entered into a building contract with the Perak State Economic Development Corporation ('SEDC') and had engaged the debtor as a sub-contractor for that scheme made an affidavit on November 2, 1976 to the effect that he had terminated the services of the debtor as his construction contractor and supplier of materials on September 23, 1976 and denying any indebtedness to him after that date. The garnishee summons came up before the Senior Assistant Registrar on three occasions in November 1976 and then on November 24, 1976 it was by consent of all parties transferred to the judge.

At the hearing of the garnishee summons before the learned judge on December 13, 1976 both the respondent and his counsel were absent and it was accordingly ordered that the respondent do forthwith pay the appellant the sum of $30,971 in satisfaction of the judgment debt and costs and that in default execution was to issue therefor. On the same day that order was by consent vacated upon terms that the sum of $30,971 be deposited with Mahendran & Co. (solicitors for the respondent) within three weeks for the purpose of satisfaction of the appellant's claim in the event that he was successful, that if this condition was not satisfied execution should proceed as ordered and that in the event of further moneys being released by the SEDC such moneys should be utilised for payment of the said sum. The respondent's solicitors wrote to the appellant's solicitors on December 30, 1976 confirming the deposit with them of the said sum in strict compliance with the terms of the order 'for the purpose of satisfaction of the (appellant's) claim in the event he is successful'.

The debtor then made a statutory declaration on March 23, 1977 which was filed in these proceedings briefly to the effect that moneys were in fact owing to him by the respondent after service of the garnishment notice, refuting the affidavit of the respondent as false, fraudulent and aimed to deceive the court and alleging that even after the service of the garnishment notice the latter had on the same day released to him a sum of $30,000 and that to defeat the claims of his creditors he had colluded and devised a scheme by registering a new firm under the style of Embassy Construction, the partners in which were his younger brother, his wife, an ex-employee of the respondent's solicitors named Christopher Anthony Samy and a J. George Joseph. This Christopher Anthony Samy also made a statutory declaration on the same day confirming the contents of the debtor's statutory declaration as true and adding that all payments made to Embassy Construction by the respondent were in fact held on trust for and on behalf of the debtor and had been released to him.

The garnishee summons came up for hearing before the learned judge on April 25, 1977 when it was adjourned at the behest of counsel for the respondent to a date to be fixed and it was further ordered that the sum of $30,971 deposited with the respondent's solicitors under the consent order of December 13, 1976 be lodged in court within seven days and that in default the appellant was to be at liberty to apply for judgment. The order for deposit of the moneys in court was apparently made as a result of some doubt arising as to whether the sum in question was then still being held by the respondent's solicitors in their clients' account in view of certain information received by the managing director of the appellant that very morning according to an affidavit he made in support of another application which we will presently advert to. The sum in question was accordingly paid into court on April 30, 1977 pursuant to this order. The learned judge states in his written judgment, and neither side questions this, that on November 13, 1977 it was also agreed that the garnishee summons proceed to trial without pleadings on the issue "whether there was an attachable debt with the garnishee (respondent)" at the time of the service of the garnishment notice on him. It appears that the summons was fixed for hearing on June 29, 1977 but it was again adjourned at the instance of counsel for the respondent.

The next event is an application by the appellant by summons filed on January 17, 1978 for leave to execute against the respondent for non-compliance with the consent order of December 13, 1976 and for the sum of $30,971 paid into court to be released to it in satisfaction of its claim. This summons was supported by affidavits made by the appellant's managing director (which we have earlier referred to), Christopher Anthony Samy and the appellant's counsel and solicitor, Mr. M.C. Lock, all basically to the effect that the moneys deposited with the respondent's solicitors in their clients' account had in fact been misappropriated before the payment into court under the order of April 25, 1977 and there had therefore been non-compliance with the terms and conditions of the consent order of December 13, 1976. This application by the appellant was heard before the learned judge in chambers on February 6, 1978. After short submissions the learned judge made no order on the application but ordered that the hearing of the garnishee summons was to proceed on April 25, 1978 without any postponement. It appears however that the matter was taken off the list for April 25, 1978 by the court and was fixed for October 3, 1978 when it was heard.

At the hearing of the garnishee summons on October 3, 1978 the respondent gave evidence to the effect that he had terminated the services of the debtor on September 23, 1976 and engaged Embassy Construction the next day to complete the sub-contract and that since September 24, 1976 he had made all payments to Embassy Construction and no moneys were due from him to the debtor after the termination of his services. He was cross-examined on behalf of the appellant but we do not think it is necessary to go into his evidence at this stage. All that we need mention is that he alleged payments to Embassy Construction and produced some receipts which would appear to conflict with receipts issued by the debtor which purportedly show payments to him. At the end of his cross-examination he said that he did not pay the sum deposited in court and did not know until that day who had paid it.

Counsel for the respondent then apparently applied to cross-examine the debtor on the statutory declaration he had made previously and this was allowed. The debtor in his evidence resiled completely from what he had stated in his statutory declaration and stated that he was paid in full before the termination of his sub-contract with the respondent on September 23, 1976 and that the respondent thereafter did not owe him any moneys. He then purported to explain why he had said otherwise in his statutory declaration by making extremely grave allegations against both counsel appearing for the appellant and the father of the appellant's managing director, stating that the receipts were written and the statutory declaration made by him on the direction and instigation of Mr. Lock on a promise of a mone-

tary payment to him and in effect alleging a crass criminal conspiracy to pervert the course of justice on the part of these three. He then admitted in the course of his evidence that he was adjudicated a bankrupt on April 20, 1978.

Immediately on this disclosure of the debtor's bankruptcy, counsel for the respondent submitted to the learned judge, by virtue of section 50 of the Bankruptcy Act which for the present purposes it will suffice to say restricts the rights of a creditor who has not completed the attachment of a debt due by receipt of the debt as against the Official Assignee, that even if any debt was due to the debtor from the respondent there could not be any garnishment after the debtor had been adjudicated a bankrupt. The matter was then adjourned to a date to be fixed for counsel for the appellant in the meantime to put in a written submission on the point raised and for counsel for the respondent to reply thereto if so desired. It would appear from the record of appeal that counsel for the appellant did put in a written submission as directed and the learned judge then without completing the evidence or hearing any further argument delivered a written judgment on December 6, 1978 accepting the submission of counsel for the respondent on section 50 of the Bankruptcy Act and holding that the garnishee summons was abortive and must be set aside.

We should perhaps touch on a matter regarding the debtor's bankruptcy which arose in the course of submissions in this appeal. Mr. Chelliah for the respondent tells us that he understands that the debtor was made a bankrupt on the petition of a creditor represented by Mr. M.C. Lock, the solicitor and one of the counsel for the appellant. Mr. Lim Kean Chye for the appellant however informs us that the debtor had declared himself a bankrupt on his own petition. We have looked at the court bankruptcy file pertaining to the debtor and find that Mr. Chelliah appears to have been wholly misinformed by his informant in this respect. According to the court bankruptcy file the debtor himself presented a petition for bankruptcy on November 29, 1977 on his own declaration of inability to pay his debts and was adjudicated a bankrupt on April 20, 1978.

It is not clear as to the purpose wherefor, when the submission by counsel for the respondent with regard to section 50 of the Bankruptcy Act was made, the matter was adjourned by the learned judge to a date to be fixed apart from giving time for written submissions or the nature of ruling he had to give in the matter. It is unfortunate that several aspects of fact and law which would only have been clear if all the evidence to be adduced had been taken were not considered and determined and the learned judge had perhaps by an oversight failed to consider the specific terms of the consent order of December 13, 1976 for the purposes of deciding the matter before him. It would have been necessary for the learned judge to decide in the first instance whether any moneys were in fact due at all from the respondent to the debtor at the time of the service of the garnishment notice and this must necessarily turn on the evidence and in particular on that relating to the conflicting allegations with regard to Embassy Construction being a colourable device to defeat the garnishment proceedings, the latter's composition and other relevant factors as for instance the fact that although the respondent and the debtor had both stated when giving oral evidence that the debtor had been paid in full on or before September 23, 1976, the debtor said otherwise in his statutory declaration and also wrote a letter on February 5, 1977 to the respondent claiming that moneys were still due to him for the work completed at the worksite.

The learned judge did not also consider whether there were other moneys due from the respondent to the debtor in the light of the former's evidence with regard to (a) the amount of work completed by the debtor, the sum payable therefor and the sum actually paid to the debtor which tends to show the probability of some balance due and owing to the latter at the termination of his services, (b) the question of deductions made by him by way of commission in excess of that permitted under the agreement between him and the debtor, and (c) the matter of some $52,000 advanced to him by the debtor for the guarantee which he had to furnish to the SEDC and that no part of this sum had been repaid since. The question would therefore arise for consideration as to whether any other moneys were still outstanding even if it was accepted that the debtor's sub-contract had been terminated on September 23, 1976. The learned judge did not furthermore consider the evidence to determine the question whether the respondent had made payments to the debtor after service of the garnishment notice and if so whether or not he then made himself personally liable to the appellant for the judgment debt and whether in such circumstances the matter of the bankruptcy of the debtor had any relevance to the appellant's claim.

Without considering the evidence in respect of all these aspects and which in any event had only been partly taken, the learned judge merely decided the matter on an application of the provisions of section 50 of the Bankruptcy Act and set aside the garnishee summons. His order is however *nihil ad rem quoad* the disposition of the moneys lodged in court pursuant to the order of April 25, 1977; it does not touch on the moneys in court at all. If on a consideration of the evidence the learned judge had found that there were in fact no moneys due at all from the respondent to the debtor then the matter would have been at an end and the sum deposited in court should have been ordered to be returned to the respondent by or on whose behalf it was paid. If, on the other hand, the learned judge had found that there were in fact moneys due from the respondent to the debtor then subject to other considerations which we will discuss presently there would have to be an order for the moneys to go to either the appellant or the Official Assignee as the case may be. On this and the other aspects of the case where in our view the matter of evidence would be material and pertinent, the appellant was never given an opportunity to adduce evidence of its own and indeed to cross-examine the debtor who had renegued his previous sworn statement.

If it had been found that there were in fact moneys due from the respondent to the debtor then the next step would be to consider whether there was an attachable debt and in this connection the application of section 50 of the Bankruptcy Act would have to be examined as to whether its effect was to deprive the appellant of its rights to the moneys as a result of the bankruptcy of the debtor. The learned judge would then in this regard have to decide whether the appellant was protected as a secured creditor by the provisions of section 8(2) of the Bankruptcy Act and therefore outside the purview of section 50 and for this purpose consider the definition of 'secured creditor' in section 2 of the Act as meaning *inter alia* a person holding a lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor. We think we should perhaps refrain from expressing any views on the question of whether or not the appellant is a secured creditor in the light of the order we propose to make or discuss the authorities in this regard and more especially so in the face of the incomplete state of the evidence, and would only observe that we think it will be necessary in this connection to adequately consider the terms of the consent order of December 13, 1976 and the question whether the appellant has an equitable lien on the moneys lodged in court or a lien over any other moneys due and payable by the respondent to the debtor as, for example, the sum of $25,000 paid to the respondent on February 7, 1977 as progress payment by the SEDC, in view of the third condition imposed in the consent order of December 13, 1976, and the fact that it is alleged there was non-compliance with that order on the ground that the sum deposited with the respondent's solicitors had been withdrawn in breach of its terms.

In the event that it was found on the facts and law that the appellant was not a secured creditor, the learned judge should then have considered the allegation of trickery or fraud on the basis of what may conveniently be termed the Armorduct principle, enunciated in *Armorduct Manufacturing Company Limited* v. *General Incandescent Company Limited,*[1] a decision of the Court of Appeal in England which involved the postponement of an execution caused by a trick and dishonesty on the part of the defendant in that case, in which Farwell L.J., said (at page 147):

"I am not aware of any case in which it has been suggested that if the creditor has been prevented by force, as in *In re London Cotton Co.* (L.R. 2 Eq. 53), or by fraud or trickery, from issuing execution, the court will not exercise its discretion in favour of the creditor. It is said that the persons who really will be affected by the execution are the other creditors of the company. That is true, but the rights of the other creditors were before the liquidation subject to the legal right of the plaintiffs to issue execution on their judgment. They were prevented from doing so by the trickery of the company, and the other creditors are not entitled to take advantage of that wrongful act and thereby become participators therein. The creditors cannot set up any right as third parties to take advantage of the trick of the company."

This principle would appear to be kindred to and perhaps evolved from an equitable maxim of undeniable respectability that equity will not allow a statute to be used as an instrument or engine of or a cloak for fraud. *Armorduct, supra,* was considered in *In re Grosvenor Metal Co. Ltd.*[2] which dealt with a statutory extension of the Armorduct principle, where Vaisey J., in setting aside the rights of the liquidator in favour of the applicant regarding the postponement of an execution caused by the request of and pressure from the defendant in that matter, said (at page 64):

"I need only mention *Armorduct Manufacturing Company Limited* v. *General Incandescent Company Limited*[1] in which it was held by the Court of Appeal that, where the postponement of execution had been caused by a trick on the part of the defendant company, the plaintiffs ought not to be prevented from proceeding with their execution.... The effect of the decision in the case to which I have just referred made it clear that in the case of a trick, or something equivalent to dishonesty, the court had power to act, although there was no express statutory provision enabling it to do so. That case of *Armorduct Manufacturing Company Limited* v. *General Incandescent Company Limited*[1] has always been regarded hitherto as the high-water mark of this jurisdiction, and I think that before the passing of the Companies Act, 1948, nothing short of a trick, or some actual dishonesty, would justify interference by the court."

The learned judge in the matter before us never considered this question of trickery or fraud and, if there was found to be any, whether it would preclude an ostensible claim of the Official Assignee prevailing against the appellant, and in this respect consideration would have been necessary *inter alia* of the allegation of the unauthorised and surreptitious withdrawal of the sum ordered to be deposited with the respondent's solicitors in breach of the terms of the consent order of December 13, 1976, the fact that the respondent in giving evidence on oath at the hearing of the garnishee summons on October 3, 1978 stated that the moneys deposited in court were not his and that he did not know even up to that day who had paid that sum, the fact that the debtor had himself presented a petition to be declared bankrupt on November 29, 1977 when on November 13, 1977 it had been agreed that the issue to be tried without pleadings on the garnishee summons was whether there was an attachable debt with the respondent at the time of the service of the garnishment notice on him and the fact that the debtor had been adjudicated a bankrupt on April 20, 1978 when the learned judge had made an order on February 6, 1978 fixing the hearing of the garnishee summons on April 25, 1978 and directing that the hearing was to proceed on the day fixed without any postponement. We need hardly add that all this requires consideration of the evidence and by that we mean all the evidence to be adduced when taken and completed.

Mr. Chelliah however submits that the question of trickery or fraud had already been considered by the learned judge when he made no order on February 6, 1978 on the appellant's summons of January 17, 1978 for leave to execute against the respondent for non-compliance with the consent order of December 13, 1976 and for the moneys paid into court to be released to it in satisfaction of its claim. We think not. That application appears to have been resisted by the respondent on two grounds according to the notes of hearing — first, that the respondent had in fact by then paid the moneys into court, and second, that the allegation as to the surreptitious withdrawal of the moneys deposited with the respondent's solicitors under the consent order of December 13, 1976 was directed against the respondent's solicitors and not the respondent and he should not therefore be

penalised, and it would seem that on that basis no order was made thereon. The summons appears to have been taken out and arguments advanced on the postulate of non-compliance with the terms of the consent order and no mention of trickery or fraud appears to have been made then nor was the Armorduct principle mooted or considered. There was no disclosure then which became apparent only when the respondent gave evidence under oath at the hearing of the garnishee summons some eight months later that the moneys deposited in court were not his and that he did not know who had in fact made this payment. Again no one seemed at that stage to have been aware that the debtor had filed a petition for bankruptcy on November 29, 1977 nor had all the evidence been taken to determine or consideration given to the question as to whether there were any moneys due from the respondent to the debtor which were attachable. And in any event we do not think when the time came for the learned judge to consider the application or applicability of the provisions of section 50 of the Bankruptcy Act that he was precluded from considering the question of trickery or fraud in the light of the evidence adduced or rather to be adduced at the hearing of the garnishee summons and the relevance or otherwise of the Armorduct principle in the context of these proceedings.

In view of the divers matters we have adumbrated we think that all the evidence should have been taken and completed and the several aspects of this matter considered before the learned judge could come to a firm conclusion on the issue to be decided on the garnishee summons, quite apart from the undesirability of leaving unchallenged on record, in fairness if for nothing else, the gross allegations of criminal and professional misconduct made against two members of the Bar appearing in the case and for that matter the father of the appellant's managing director. The facts and circumstances of this matter manifest a position where section 50 of the Bankruptcy Act would appear to be a *terminus a quo* rather than *ad quem*. We are accordingly of the view that the submission made by counsel for the respondent to the learned judge on section 50 of the Bankruptcy Act at the stage that he did in the midst of evidence being taken and before it was completed was presumptuous and premature in the context of this case and the decision of the learned judge in acceding thereto was therefore regrettably precipitate. In the event we think this is a proper case to order a retrial of the garnishee summons.

We accordingly allow the appeal with costs, set aside the order of the learned judge made on December 6, 1978 and order that the garnishee summons in this case be tried *de novo* before another judge. The learned judge made no order as to the costs before him but we think that the proper order should now be that the costs below be costs in the cause. The deposit in court by way of security will be paid out to the appellant and the moneys lodged in court under the order of April 25, 1977 will remain there until the final disposal of this matter. One thing more: the parties might perhaps now wish to explore the necessity or desirability of a trial with pleadings in the circumstances of this case and seek directions from the trial judge to this end as this is a matter best sorted out in the court below.

Appeal allowed.

Solicitors: *Mariadass Lock & Co.; Mahendran & Co.*

MINISTER OF LABOUR AND MANPOWER & ANOR. v. PATERSON CANDY (MALAYSIA) SDN. BHD.

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat & Syed Othman F.JJ.) March 4 & April 2, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 4 of 1978]

Administrative Law — Certiorari — Application to quash decision of Minister — Claim for recognition of trade union — Decision of Minister — Made after inquiry by Registrar of Trade Unions — Whether Minister exercised discretion properly — Ouster clause — Minister not exceeding jurisdiction — Certiorari does not lie — Trade Union Act, 1959, ss. 2(2) & 17(1) — Industrial Relations Act, 1967, s. 9.

Industrial Law — Trade Unions — Claim for recognition — Failure to accord recognition — Order by Minister — Trade Union Ordinance, 1959, ss. 2 & 17 — Industrial Relations Act, 1967, s. 9.

This was an appeal from the decision of Harun J., reported in [1979] 2 M.L.J., 294. The facts were that in 1973 the National Union of Commercial Workers (NUCW) claimed recognition from the respondents, which wrote to the Director-General of Industrial Relations (DGIR) for advice whether to grant recognition or not. The DGIR informed NUCW that it could not claim recognition. Then in 1976 another trade union the Machinery Manufacturing Employees Union (MMEU) claimed recognition. The respondent company referred the matter to DGIR and it received a reply that the MMEU was entitled to represent its workers. The respondent company refused to accept this advice and although the DGIR through the Registrar of Trade Unions refused to reconsider the matter and although a membership check by the Registrar of Trade Union revealed that 62.5% of the workers belonged to the union, the respondent company refused to grant recognition to the MMEU. In 1976 the MMEU reported the matter to the Minister. In the meantime the workmen in despair of being represented by a trade union joined the NUCW which again claimed recognition. The respondent company again sought the advice of the DGIR who returned the same answer. The respondent company decided to accord recognition to the NUCW. Subsequently the DGIR informed the respondent company that the Minister had decided that the company should accord recognition to the MMEU. The respondent company thereupon applied for an order of *certiorari* to quash the decision of the Minister. An order of *certiorari* was made in the High Court and the appellant thereupon appealed to the Federal Court.

Held, allowing the appeal: (1) the Minister in this case had the right to make the order he made and did not exceed his jurisdiction in doing so;

(2) the Minister was entitled to ask the Registrar of Trade Union to make the relevant inquiry;

(3) it was clear that the requirement of similar trades etc., in section 2(2) of the Trade Union Ordinance 1959 favoured the MMEU and not the NUCW and the Minister had not exceeded his jurisdiction or committed a jurisdictional error;

(4) in view of the ouster clause in section 9(5) of the Industrial Relations Act, 1967, *certiorari* could not lie in this case, as there was no excess of jurisdiction.

Cases referred to:-

(1) *Attorney-General of Malaysia* v. *Chemical Workers' Union of Malaya & Anor.* [1971] 1 M.L.J. 38, 40.